

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION**

IN RE: NATIONAL PRESCRIPTION)	
OPIATE LITIGATION)	
)	
WEST BOCA MEDICAL CENTER, INC.,)	
)	
Plaintiff)	
)	MDL 2804
v.)	
)	No. 17-md-2804
AMERISOURCEBERGEN DRUG CORP.,)	
ET. AL.,)	
)	
Defendants.)	

**MOTION OF 44 HOSPITAL AMICI FOR LEAVE TO FILE AN *AMICUS CURIAE*
BRIEF IN SUPPORT OF PLAINTIFF WEST BOCA MEDICAL CENTER, INC.’S
OPPOSITION TO DEFENDANTS’ MOTIONS TO DISMISS**

The hospital entities listed below (“Amici Hospitals”) respectfully request leave of this Court to file the attached *amicus* brief in support of plaintiff West Boca Medical Center, Inc.’s opposition to the manufacturer and distributor defendants’ motions to dismiss. The Amici Hospitals are located in rural, suburban, and urban communities throughout the United States. And much like the communities they serve, they have been severely affected by the opioid epidemic. The Amici Hospitals have served on the frontlines of this public health crisis and expended substantial resources and human capital in providing unreimbursed and under-reimbursed care to thousands of patients who have suffered from opioid overdoses or other opioid-related health emergencies.

The Amici Hospitals have the requisite interest to support granting leave to file the accompanying brief. First, they are not represented in this action. Second, a decision by this

Court dismissing the bellwether Complaint has the potential to substantially affect the Amici Hospitals. Third, as a group of medical centers and hospitals located throughout the nation that have been and will be on the forefront of responding to the opioid crisis, the Amici Hospitals have unique information and perspective to offer the Court in deciding whether and how to apply the tobacco-litigation case law relied upon by the defendants in their motions to dismiss. In summary, due to the potential magnitude of the effect of this Court's decision on the pending motions to dismiss, Amici Hospitals respectfully request leave to be heard.

AMICI HOSPITALS

The Amici Hospitals are located in rural, suburban, and urban communities throughout the United States and include the following: Allegiance Behavioral Health Center of Plainview, Allegiance Specialty Hospital of Greenville, Allegiance Health Center of Ruston, Allegiance Health Center of Monroe, Bailey Medical Center, Bienville Medical Center, BSA Hospital, BSA Physicians, Centennial Hills Hospital Medical Center, CLHG-Avoyelles dba Avoyelles Hospital, Corona Regional Medical Center, Desert Springs Hospital, Eureka Springs Hospital, The George Washington University Hospital, Harrington Cancer Center, Heart Hospital of New Mexico at Lovelace Medical Center, Henderson Hospital, Hillcrest Hospital Claremore, Hillcrest Hospital Cushing, Hillcrest Hospital Henryetta, Hillcrest Hospital Pryor, Hillcrest Hospital South, Hillcrest Medical Center, Lovelace Medical Center, Lovelace Medical Group, Lovelace Regional Hospital Roswell, Lovelace Westside Hospital, Lovelace Women's Hospital, Manatee Memorial Hospital, North Metro Medical Center, Oakdale Community Hospital, Oklahoma Heart Institute, Physicians Surgical Hospitals, River Valley Medical Center, Sabine Medical Center, Seton Medical Center Harker Heights, Spring Valley Hospital Medical Center, Southwest - Inland Valley Medical Center, Summerlin Hospital Medical Center, Temecula

Valley Medical Center, Tulsa Spine & Specialty Hospital, Utica Park Clinic, Valley Hospital Medical Center, and Winn Parish Medical Center.

ARGUMENT

The United States Court of Appeals for the Sixth Circuit has characterized leave to appear as amici in a case as a matter of privilege committed to “the sound discretion of the court....” *United States v. State of Michigan*, 940 F.2d 143, 165 (6th Cir. 1991). Grant of leave to appear as amici is appropriate where such parties have “an important interest and a valuable perspective on the issues presented....” *Michigan State AFL-CIO v. Miller*, 103 F.3d 1240, 1245 (6th Cir. 1997); *United States v. State of Michigan*, 940 F.2d at 146. “Traditionally, amicus status has been appropriately accorded to a movant who is manifestly able ‘to assist the court by giving information, or otherwise, or who conduct[s] an investigation or other proceeding on request or appointment therefor by the court.’” *United States v. City of Columbus, Ohio*, No. CIV.A. 2:99-CV-1097, 2000 WL 1745293, at *1 (S.D. Ohio Nov. 20, 2000) (citing *United States v. State of Michigan*, 940 F.2d at 164) (explaining amici can “provide impartial information on matters of law about which there [is] doubt, especially in matters where there is public interest.”). Factors relevant to the determination of amicus status include whether or not the proffered information “is timely, useful, or otherwise necessary to the administration of justice.” *Id.*

In addition to serving on the frontlines over the last several years, the Amici Hospitals will play an essential role in any comprehensive plan to address the opioid crisis. The motions to dismiss filed by the manufacturer and distributor defendants seek to exclude all hospitals from serving any prophylactic role through this litigation. In so doing, those defendants rely heavily on past court decisions arising out of the tobacco mass tort litigation. Amici Hospitals respectfully seek to file an amicus brief to explain important differences between the

circumstances surrounding the present opioid public health crisis and those that surrounded the tobacco litigation. They also file this amicus brief to demonstrate how the exclusion of the medical community from the tobacco litigation resulted in a fundamental failure of the recoveries in those cases from ever actually reaching those on the frontlines of tobacco healthcare treatment and prevention. Amici Hospitals respectfully submit that this proffered information is “timely, useful, or otherwise necessary to the administration of justice.” *Id.*

CONCLUSION

For the foregoing reasons, the Amici Hospitals respectfully request the Court leave to file the attached *amicus brief*.

Respectfully submitted,

/s/ Theresa A. Richthammer

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CERTIFICATE OF SERVICE

I hereby certify that on August 3, 2018 the foregoing was filed electronically. Notice of this filing will be sent by operation of the Court's electronic filing system to all parties indicated on the electronic filing receipt. Parties may access this filing through the Court's system.

/s/ Theresa A. Richthammer

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